IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

WP(C).No. 12109 of 2006(N)

PETITIONERS:

----

1. **DR.SINA.A.R.,**
   AGED 33 YEARS, S/O.K.ASOKAN,
   LECTURER, DEPARTMENT OF HINDI,
   M.E.S.PONNANI COLLEGE, PONNANI,
   PONNANI SOUTH.P.O., MALAPPURAM DISTRICT.

2. **SIJI VERGHESE.V.,**
   AGED 30 YEARS, W/O.MATHEW SAMUEL
   LECTURER, DEPARTMENT OF COMMERCE
   M.E.S.PONNANI COLLEGE, PONNANI,
   PONNANI SOUTH.P.O., MALAPPURAM DISTRICT.

3. **JAYAKRISHNAN.K,**
   AGED 30 YEARS, S/O.K.RADHAKRISHNAN
   LECTURER, DEPARTMENT OF PHYSICS,
   M.E.S.PONNANI COLLEGE, PONNANI,
   PONNANI SOUTH.PO., MALAPPURAM DISTRICT.

BY ADV. SRI.NOUSHAD THOTTATHIL

RESPONDENTS:

----

1. **THE STATE OF KERALA,**
   REPRESENTED BY THE PRINCIPAL SECRETARY,
   DEPARTMENT OF HIGHER EDUCATION,
   GOVERNMENT OF KERALA,
   THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF COLLEGIATE EDUCATION.,**
   VIKAS BHAVAN, P.M.G.JUNCTION.,
   THIRUVANANTHAPURAM.

3. **THE DEPUTY DIRECTOR OF COLLEGIATE**
   EDUCATION, KOZHIKODE.

4. UNIVERSITY OF CALICUT,
REPRESENTED BY THE REGISTRAR,
CALICUT UNIVERSITY, THENHIPALAM.P.O.,
MALAPPURAM DISTRICT.

5. MUSLIM EDUCATIONAL SOCIETY,
REPRESENTED BY THE GENERAL SECRETARY,
DR.P.K.FAZAL GAFOOR.

6. THE PRINCIPAL, FAROOK COLLEGE,
FAROOK COLLEGE.P.O., KOZHIKODE.

BY ADV. SRI.A.A.ABUL HASSAN
GOVERNMENT PLEADER
SRI.S.GOPAKUMARAN NAIR, SC, CALICUT UTY
SRI.E.S.ASHRAF, SC, CALICUT UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.12109/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE APPOINTMENT ORDER MES/AC/E-07/2004, DT. 9.2.05 ISSUED BY THE FIFTH RESPONDENT TO THE 1ST PETITIONER.

EXT.P2:- COPY OF THE APPOINTMENT ORDER NO.MES/AC/E-07/04, DT.9.2.05 ISSUED BY THE 5TH RESPONDENT TO THE 2ND PETITIONER.

EXT.P3:- COPY OF THE APPOINTMENT ORDER NO.MES/AC/E-07/04, DT.14.2.05 IS BY THE 5TH RESPONDENT TO THE 3RD PETITIONER.

EXT.P4:- COPY OF THE ORDER NO.GA-II/A3/1040/2005, DT.10.8.05 ISSUED BY THE 4TH RESPONDENT.

EXT.P5:- COPY OF THE ORDER NO.GA-II/A3/1040/05, DT.9.12.05, DT.9.12.05 ISSUED BY THE 4TH RESPONDENT.

EXT.P6:- COPY OF THE LETTER NO.D1/6053/05, DT.5.1.06 ISSUED BY THE 3RD RESPONDENT TO THE 6TH RESPONDENT.

EXT.P7:- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DT.3.1.06, PASSED IN WP(C0 NO.31575/05.

EXT.P8:- COPY OF THE ORDER NO.G.O(MS) NO.162/99 EDN. DT.THIRUVANANTHAPURAM 6.12.99 FOR HIGHER EDUCATION (B) DEPARTMENT ISSUED BY THE 1ST RESPONDENT.

EXT.P9:- COPY OF THE LETTERS DT.31.7.06 AND 1.8.06 ISSUED BY THE PRINCIPALS OF M.E.S. KEVEEYAN COLLEGE VALANCHERY AND M.E.S. KALLADI COLLEGE, MANNARKKAD.

EXT.P10:- COPY OF THE STATEMENT OF WORKLOAD ASSESSED ON 18.12.02 IN RESPECT OF THE COLLEGES FUNCTIONING UNDER THE 5TH RESPONDENT.

EXT.R5(A):- COPY OF THE STATEMENT OF WORKLOAD IN THE DEPARTMENT OF HINDI ON 1.11.03.

EXT.R5(B):- COPY OF THE STATEMENT OF WORKLOAD IN THE COMMERCE DEPARTMENT AS ON 1.11.3.

EXT.R5(C):- COPY OF THE STATEMENT OF WORKLOAD IN THE DEPARTMENT OF PHYSICS AS ON 1.11.03.

EXT.R5(D):- COPY OF THE JUDGMENT IN WP(C) NO.482/05 DT.12.8.05 PASSED BY THIS HONOURABLE COURT.

/TRUE COPY/

K.BALAKRISHNAN NAIR, J.

W.P.(C).NO.12109 of 2006

Dated this the 17th day of January, 2007

JUDGMENT

The petitioners are teachers of M.E.S. College, Ponnani. They were appointed in the retirement vacancies of Sri.Habeebulla V.K. , Mohammed Hussain Thayil and Subramanian K.K. respectively. Their appointments were approved by the university by Exts.P4 and P5 orders dated 10-8-2005 and 9-12-2005. But, the third respondent Deputy Director did not release the salary due to them. Instead, he called for certain particulars by Ext.P6 communication from the Principal of their college. Feeling aggrieved by the omission of the third respondent to release the salary due to them, this writ petition is filed.

2. According to the petitioners, in the light of the various decisions of this Court once the appointment is approved by the university, the Deputy Director is bound to release the salary. If the said officer has got any complaint, the only course open to him is to move the university to recall or modify the approval orders. So, they pray for issuing appropriate orders to the third

respondent to release the salary.

3. The third respondent has filed a counter affidavit in which it is stated that as per the University Laws (Amendment) Act 2005, Sec.57 of the Calicut University Act has been amended incorporating the following as Sub Sec.1 to Section 57.

> " Appointments to the posts eligible to receive the salary from the Government shall be made only against posts sanctioned by the Government or by such officers as may be authorised by the Government."

4. It is submitted in the counter affidavit that the university approved the appointment of the petitioners overlooking the said statutory provision. It is further submitted that for creation of post and filling up of vacancies sanction of the Government is necessary as per Government letter dated 20-3-2004. In view of the above position, the salary due to the petitioners shall not be released to them.

5. The petitioners have filed a reply affidavit dealing with the contentions in the counter affidavit. The educational agency the 5th respondent has filed counter affidavit supporting the petitioners. The third respondent has filed additional counter

affidavit producing work load statement.

6. Heard the learned counsel on both sides. But for the amendment to Sec.57 of the University Act, this Court would straight away directed to release the salary of the petitioners subject to their right to move university to recall or modify Exts.P4 and P7. The contention of the Government that for filling up vacancies in the sanctioned post their permission is necessary cannot be accepted. The filling up of post of teachers in private aided colleges are governed by the provisions of the University Act and statutes. The amendment Act also does not provide that for filling up vacancies in existing sanctioned post Government sanction is necessary. But for creation of new posts, the sanction of the Government is necessary. In view of the above quoted amendment if the petitioners were appointed to the vacancies that arise in existing sanctioned post, permission from the Government is unnecessary. Since the third respondent has raised the contention that the university approved the appointment without adverting to the amended provisions of the Calicut University Act, the 4th respondent is directed to consider whether there is any defect in the approval of appointment granted as per Exts.P4 and P5, in the light of the newly amened

provisions of the University. But it is clarified that the university is not bound to look into any letters issued by the Government. The university shall take a decision and clear the appointments of the petitioners, if the same is in accordance with the Act and statute within one month from the date of production of a copy of this judgment. If the university clears that their appointments is not violative of the provisions of the amendment Act the third respondent shall release the salary due to the petitioners within one month thereafter.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,JUDGE.

MS